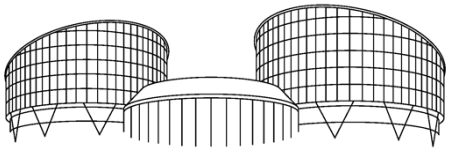

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF OOO MEDIAFOKUS v. RUSSIA

(Application no. 55496/19)

JUDGMENT

STRASBOURG

17 January 2023

This judgment is final but it may be subject to editorial revision.

In the case of OOO Mediafokus v. Russia,

The European Court of Human Rights (Third Section), sitting as a Committee composed of:

Georgios A. Serghides*, President*,
Jolien Schukking,
Darian Pavli*, judges*,
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 55496/19) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 11 October 2019 by a Russian limited liability company, OOO Mediafokus ("the applicant company"), that was represented by Ms S. Kuzevanova, a lawyer practising in Voronezh;

the decision to give notice of the application to the Russian Government ("the Government"), initially represented by Mr M. Galperin, former Representative of the Russian Federation to the European Court of Human Rights, and later by his successor in this office, Mr M. Vinogradov;

the parties' observations;

Having deliberated in private on 6 December 2022,

Delivers the following judgment, which was adopted on that date:

SUBJECT MATTER OF THE CASE

1. The case concerns the wholesale blocking of access to a new website of an online media on the grounds that its content "mirrored" the proscribed content on its former website.

2. The applicant company is the owner of online magazine *Ezhednevnyy Zhurnal* at www.ej.ru. Since 2004 it has been publishing research and analysis by political scientists, economists and journalists, many of whom have been critical of the Russian authorities.

3. On 13 March 2014 the Prosecutor General requested the telecoms regulator Roskomnadzor to block access to the applicant company's website and its "mirrors" once they were identified (for more details, see *OOO Flavus and Others v. Russia*, nos. 12468/15 and 2 others, §§ 5-10, 23 June 2020).

4. In 2015 the applicant company created a new website at www.ej2015.ru. The content of the original website had not been moved to the new website.

5. On 29 November 2017 the applicant company found out that access to the new website had been blocked. Roskomnadzor informed its web hosting service provider that access to the website www.ej2015.ru had been restricted on the basis of the Prosecutor General's blocking request of 13 March 2014 as the new website was a "mirror" of the original one and contained "calls for extremist activities".

6. As the URL addresses of pages containing offending material were not specified, the applicant company asked Roskomnadzor to identify web pages containing "calls for extremist activities". On 11 December 2017 Roskomnadzor replied that they had detected content on the new website which was "identical" to the content of the old website and fell within the scope of the Prosecutor General's blocking request of 13 March 2014. No details as to the nature or location of the offending content were given. The applicant company complained to a court.

7. On 15 May 2018 the Taganskiy District Court in Moscow dismissed the complaint. It declined to assess the legal basis for the Prosecutor General's blocking request on the grounds that it had previously upheld that request as being lawful (see the judgment of 29 August 2014 in *OOO Flavus and Others*, cited above, § 9). On the argument that the 2014 blocking request had not included the new website, the court replied that the law did not require the Prosecutor General to reference all websites to which access had to be restricted. The court refused to examine the content of the new website, holding that Roskomnadzor's assertion that the offending content was present on it was sufficient evidence of its existence. It also held that Roskomnadzor was not required to identify specific web pages containing offending content.

8. On 4 September 2018 the Moscow City Court dismissed the applicant company's appeal, endorsing the position of the District Court. It stated that "a lack of the statutory definition of the term 'mirror website' does not render the Prosecutor General's blocking request unlawful, since [the applicant company] had set up a copy of the website www.ej.ru with a new domain name ... The fact that the 'mirror website' is owned by [the applicant company] is apparent from its application to a court".

9. On 11 February and 18 April 2019 the Moscow City Court and the Supreme Court of Russia, respectively, refused the applicant company leave to appeal to a cassation instance.

THE COURT'S ASSESSMENT

ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

10. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

11. The blocking the applicant company's website prevented visitors to the website from accessing its content and amounted to "interference by a public authority" with the right to receive and impart information (see *OOO Flavus and Others v. Russia*, nos. 12468/15 and 2 others, § 29, 23 June 2020). The interference will constitute a breach of Article 10 unless it is "prescribed by law", pursues one or more of the legitimate aims referred to

in Article 10 § 2 and is "necessary in a democratic society" to achieve those aims.

12. On the legal basis for the interference, the Court notes that the domestic law allows the authorities to block websites featuring specifically listed offending content but also enables the website owners to have access to them restored once the offending content has been taken down (ibid., § 12). However, for that possibility to be realistic, the offending content must be clearly identified, otherwise the owner of the website would not know which content must be removed in order for access to be restored.

13. In a previous judgment concerning the applicant company's original website at www.ej.ru, the Court found that the Russian authorities had acted in an arbitrary manner as the Prosecutor General's blocking request referred to the website's entire domain rather than identified specific problematic webpages (ibid., § 32).

14. If the Prosecutor General's request was deemed legally deficient to justify the blocking of the applicant company's original website, it was even less adequate to block its new website which had not existed at the time the request was issued and featured entirely new content. If only for that reason, the 2014 request could not refer to any allegedly illegal content that only appeared in 2015. Accordingly, it did not comply with the legal requirement that the blocking measure must specify the location of the web page permitting illegal content to be identified (ibid., §§ 12 and 32).

15. Furthermore, in so far as the blocking measure targeting the new website relied on the reference to "mirror" websites in the text of the 2014 request, the Court notes the domestic courts' acknowledgement that the term "mirror website" had not been defined in any legislation. The domestic law does not provide for the possibility of blocking websites simply for being "mirrors" of another, and there are no legal criteria by reference to which the fact that one website is a "mirror" of another can be established. In the absence of such criteria, the courts' finding that the new website should be blocked solely on the basis that it shared a similar name and the same owner with the previously blocked one did not have a clear and foreseeable legal basis. Moreover, as the courts declined to access the new website in order to inspect its allegedly offending content, they failed to appreciate the fact that the new website was an original site with new content.

16. Finally, as the Court has previously found, Russian law contains no procedural safeguards capable of protecting website owners from arbitrary interference. It does not provide for any form of their participation in the blocking proceedings and does not give them an opportunity to remove the offending content before the blocking decision takes effect. Nor does it require the authorities to assess the impact of the blocking measure, to justify the necessity and proportionality of the interference with the freedom of expression online, and to ascertain that the blocking measure strictly targets

the unlawful content and has no arbitrary or excessive effects, including those arising from blocking access to the entire website (ibid., §§ 40-41).

17. It follows that the interference was not "prescribed by law" because the applicant company's new website had been blocked on the basis of an arbitrarily applied concept of "mirror" websites and without identification of any offending content. The Court accordingly does not need to examine whether the interference also pursued a legitimate aim and was "necessary in a democratic society".

18. There has therefore been a violation of Article 10 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

19. The applicant company claimed 10,000 euros (EUR) in respect of non-pecuniary damage and EUR 1,600 in respect of legal fees payable after the Court's ruling.

20. The Government considered that the claims were excessive and that contingency fees were unenforceable under Russian law.

21. The Court awards the applicant company EUR 7,500 in respect of non-pecuniary damage, plus any tax that may be chargeable. It further notes that the applicant company is legally liable to pay a deferred fee for legal services (see *Karuyev v. Russia*, no. 4161/13, § 30, 18 January 2022). The Court awards the amount claimed to the applicant company, plus any tax that may be chargeable to it.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 10 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant company, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 7,500 (seven thousand five hundred euros), plus any tax that may be chargeable to the applicant company, in respect of non-pecuniary damage;
      (ii) EUR 1,600 (one thousand six hundred euros), plus any tax that may be chargeable to the applicant company, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a

rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant company's claim for just satisfaction.

Done in English, and notified in writing on 17 January 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova Deputy Registrar	Georgios A. Serghides President